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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 79-1458
No. 79-1459

CHARLES G. RODMAN, as Trustee of the Estate of W. T. Grant Company, Bankrupt, and MORGAN GUARANTY TRUST COMPANY OF NEW YORK,

Petitioners,

—v.—

ALTON RINIER, as Agent for Certain Employees of Bankrupt; Answering Employees of Bankrupt; Local 807-IBT; Retail Clerks International Association; and National Labor Relations Board,

Respondents.

BRIEF OF RESPONDENT ANSWERING EMPLOYEES OF BANKRUPT IN OPPOSITION TO PETITIONS FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Where employees have a contractual right to severance pay upon discharge, and they confer beneficial services upon the Debtor-in-Possession during a Chapter XI proceeding and are discharged during that proceeding, does the absence of an order of the Bankruptcy Court adopting the severance pay policy of the Debtor-in-Possession constitute a rejection of such severance pay policy?

2. Does the subsequent failure of the Chapter XI proceeding result in a retroactive rejection of the severance pay policy of the Debtor-in-Possession?

STATEMENT OF THE CASE

Although the instant case involves an employer and its employees, the issues can be focused on more clearly if the following hypothetical set of facts had been involved.

Suppose a vendor had a contract to sell goods to a debtor. Before delivery the debtor files a Chapter XI, accepts delivery *after* the XI is filed, and uses the goods but does not pay for them. If the Chapter XI proceeding fails and results in an adjudication, what is the status of the vendor's claim?

According to the Petitioners, the contract of sale was executory because it predated the Chapter XI. Since it was executory, it remained executory until rejected or adopted. Since it was never adopted by court order, the contract must be deemed rejected either by implication or by the adjudication, and the vendor would be a general creditor.

This is what the Petitioners' arguments boil down to in *Grant*. We respectfully submit that this is not the law in the Second Circuit, nor in any other Circuit. There is no conflict between the Courts. Certiorari should be denied.

This brief is submitted on behalf of a number of non-union employees of Grant who were discharged during the Chapter XI proceeding. They are named in the caption as "Answering Employees of Bankrupt". The principles involved in this case affect all former employees of Grant similarly situated and not represented by counsel.

Petitioners have recited the facts in detail and most are not really in dispute. The Petitioners' interpretation of some of the facts require clarification and amplification.

Severance pay for Grant's employees was fixed by rules and regulations promulgated by Grant. The benefits applied to

union and non-union employees and this policy was in effect prior to October 2, 1975, the date the Chapter XI Petition was filed.

Although both Petitioners have asserted that the severance pay benefits were "*earned*" prior to the filing of the Chapter XI, this simply is not so. Severance pay was not "earned" unless and until an employee was discharged. If an employee voluntarily left Grant's employ, or was discharged for cause, he forfeited his right to severance pay. The length of employment with Grant had nothing to do with his *right* to severance pay. Only the *amount* of severance pay was related to the length of time he was employed.

Grant's rules and regulations governing severance pay were *never rejected* by court order. They were in force at the beginning of the Chapter XI proceeding on October 2, 1975, and they were in effect at the time each employee was discharged during the Chapter XI.

The Petitioners contend, however, that since Grant's severance pay benefits were not expressly *adopted* by Grant as a Debtor-in-Possession pursuant to court approval, they should be deemed rejected by implication or retroactively rejected by Grant's adjudication.

The Petitioner-Trustee also claims the Debtor in Possession "informed its employees * * * of the suspension of the payment of severance pay benefits during the pendency of the Chapter XI case, subject to further order of the Bankruptcy Court".* To support this contention in the courts below, the Trustee relied upon the testimony of Richard McLean who referred to a store manual which stated that "termination" pay was subject to approval of the Bankruptcy Court. He testified that the manual was placed in the stores "some time after October 2", although he did not testify that this was seen by Grant's employees.

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* See p. 5 of Trustee's Petition. Actually, the Bankruptcy Court *did not order* the suspension of severance benefits during the XI.

McLean further testified about a notice which was posted in the stores in January of 1976, *four months after the Chapter XI began*. The notice did not state that severance pay policies were abolished, but only that the stores were not "authorized" to make severance payments. McLean did not testify that the notice was placed in a conspicuous place in the stores where it was seen by all of the employees.

The foregoing constituted the only proof by the Trustee as to how the employees were "informed" that severance pay was suspended.

On October 28, 1975, less than one month after the Chapter XI was filed, Grant obtained an order authorizing it to pay severance benefits to John Sundman, former senior executive of the bankrupt.* Prior to the Chapter XI case, Mr. Sundman had an employment contract with Grant which included severance pay benefits.

The case of Mr. Sundman constitutes an interesting example of the double standard employed by the Debtor-in-Possession in treating severance pay for Grant's employees. The application to pay severance to Mr. Sundman was approved without objection by the creditors committee, of which the Petitioner, Morgan Bank, was a charter member.

Mr. Sundman had been employed by Grant under a written contract made only slightly more than a year before the Chapter XI petition was filed. Under this contract, Mr. Sundman became entitled to severance pay in full if he were discharged. Although Mr. Sundman worked for the Debtor-in-Possession *for less than one month*, he was awarded the full *six months severance pay* with the blessing of the creditors, including the Morgan Bank.

Although both Petitioners in this Court are claiming that the Courts below were wrong in awarding severance pay to the non-executive employees as an administration expense priority, Grant's Petition for Mr. Sundman read in part as follows:

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* See top of p. 6 of Trustee's Petition.

> "It is also the understanding that debtor's obligations to make such payments *shall constitute an expense of administration*."
>
> " * * * It had been the general policy of W.T. Grant Co. to provide severance pay to terminated employees and the understanding between debtor and Mr. Sundman is consistent with this policy and with the provisions of this agreement". (Emphasis supplied)

Perhaps the case of Mr. Sundman was designed or intended by the Debtor-in-Possession to set an example for the non-executive employees to follow, and to encourage them to stay on the good, but sinking ship Grant, and to lend a hand in keeping it afloat. Whether intended or not, the employees did precisely that. Instead of seeking other employment, they stayed on board, kept Grant alive for more than six months, and by orderly liquidating stores all over the country, generated over 600 million dollars for all of Grant's creditors.

The dramatic difference between the treatment of Mr. Sundman and the other employees of Grant illustrates the inequity of the Petitioners' position. While consenting to the payment of *six months severance* to Mr. Sundman, although he worked for the Debtor-in-Possession *for less than one month*, the Petitioners insist on a pro-rata formula for the *non-executive employees* based on the length of time they worked in the Chapter XI.

We submit that by any standard of equity, the decision of the Court of Appeals for the Second Circuit was correct and not in conflict with the decisions of any other Circuit.

WHY THE WRIT SHOULD BE DENIED

There is no substantive conflict between the decision of the Court of Appeals in the instant case and the decisions of the Courts of Appeals in *In re Mammoth Mart*, 536 F.2d 950 (1st Cir. 1976) and *In re Public Ledger, Inc.*, 161 F.2d 762 (3rd Cir. 1947).

If the *Grant* case had been heard by either the First or the Third Circuits, we believe the decision would have been identical. While *Mammoth* and *Public Ledger* may differ from *Grant* or *Straus-Duparquet** in the *mechanics* as to how severance pay should be computed, this difference in approach would not affect the *result* in the instant case. The decision in *Grant* was for the most part based on the principle that the employees conferred *beneficial* services upon the Debtor-in-Possession during the Chapter XI proceeding. Not a single decision anywhere requires that the acceptance of benefits by a debtor-in-possession be sanctified by court approval in order for such acceptance to create an administration expense priority.

The "benefits" principle is an equitable one. While both the Bankruptcy Act and the new Bankruptcy Code are founded upon equitable principles, they do not require *equal* treatment of all creditors, regardless of class. What they do mandate is *equitable* treatment. The decision in this case *is* equitable for all of the creditors.

In *Grant*, all of the employees conferred benefits on the Debtor-in-Possession by working until they were discharged. When each employee was discharged, the agreement with the Debtor-in-Possession was no longer executory. At that point, *it was fully executed*. The only remaining obligation of the employer was to pay each employee the severance pay to which he was entitled.

The severance pay obligation was more than a pre-petition commitment. It was a recognition that the employees had performed vital services and rendered important benefits in an attempt to rehabilitate an ailing debtor. Although Grant was subsequently adjudicated, the bankruptcy resulted in what the Morgan Bank's Petition described as "the largest corporate liquidation in the history of the United States".**

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* *Straus-Duparquet v. Local Union No. 3*, 386 F.2d 649 (2d Cir. 1967), which was followed by *In re Bohack Corp.*, 535 F.2d 1240 (2d Cir. 1975), *cert. denied*, 425 U.S. 966; *In re Unishops, Inc.*, 554 F.2d 305 (2d Cir. 1977).

** See p. 1, 2 of Morgan Bank's Petition.

Without the services of the employees who are the targets of the Petitioners' appeal, we believe that even the Petitioners would concede this would not have been possible.*

I

THE CLASSIFICATION OF SEVERANCE PAY IN GRANT AS AN ADMINISTRATION EXPENSE DOES NOT CREATE A CONFLICT WITH THE OTHER CIRCUITS

Much has been written in both petitions about the purported conflict between other Courts of Appeals and the decisions by the Second Circuit in *Grant* and *Straus-Duparquet*. If a conflict exists it goes to the *method* of computing severance pay rather than the result.

In both *Public Ledger* and *Mammoth Mart*, the courts wrote that severance pay matured day to day as a debt, while in *Straus-Duparquet*, the Second Circuit held that severance was compensation for termination, payable *only* when and if the employee was discharged.

The decision by the Third Circuit in *Public Ledger* almost 33 years ago when the concept of severance pay was in its early stages was understandable. The employees in *Public Ledger* filed their claim for severance as "wages" (p. 771) and the court agreed that severance payments were "wages" (p. 773). If the employees had contended that severance pay was compensation for termination, or that they had rendered valuable services to the debtor which equalled or exceeded in value the severance payments, we submit that the decision would have been different.

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* For example, Grant's Petition when it filed for a Chapter XI arrangement stated:

> "Termination of operations for even a limited period of time would destroy the goodwill of the debtor's business and severly prejudice the interest of its estate, its creditors, and stockholders, and would cause the loss of over 62,000 jobs" "

A close examination of *Mammoth Mart* discloses the facts in that case were different—crucially different. When the employees in *Mammoth Mart* applied for *more* severance, more than the four weeks' salary they had been previously paid as an administration expense by the debtor-in-possession without court order, they offered no proof that the *additional* claim they were making related to their employment *after* the Chapter XI was filed (p. 953).

The First Circuit accordingly held:

> " * * * the wages and four week's salary severance pay that the Debtor-in-Possession paid appellants *fully compensated them for the services performed after the petition was filed. The claims for additional severance pay are based entirely upon services performed by appellants to the debtor and as such, are not entitled to priority*". (p. 955) (Emphasis supplied)

If the employees in *Mammoth Mart* had *not* already been fully compensated for the benefits they had conferred on the debtor-in-possession, we submit that the result would have been different. The First Circuit indicated as much in its footnote No. 4 on page 955, where it emphasized:

> "Here where the debtor-in-possession made no new promise, but simply permitted the employees to continue their employment, *it is bound to pay under the terms of the debtor's contract only to the extent that the debtor-in-possession was the recipient of beneficial services*". (Emphasis supplied)

Having thus found that the employees were *fully* compensated for the services they rendered to the debtor-in-possession, there was no need for the First Circuit in *Mammoth Mart* to embark on a discussion of the *mechanics* of computing severance pay. The belief of the First Circuit that severance pay was earned day to day, rather than compensation for termination of employment, was *dictum* and regardless of its appeal to some courts, should be disregarded.

The decision in *Mammoth Mart* is really based upon the "benefits" principle, which is identical to the holding of the Second Circuit in *Grant*, where the Court wrote:

> "Under 'the decisions in this Circuit * * * an executory contract is binding on the debtor in possession if it receives benefits under it.' *In re Uishops, Inc.*, 553 F.2d 305, 309 (2 Cir. 1977) (Medina, J.). *Here, Grant received benefits under the contracts by permitting the workers to continue in its employ after it entered Chapter XI*. As the district court stated, Grant secured 'the services of an experienced Grant personnel during the Chapter XI proceeding. Apparently, had Grant been forced to terminate all its employees upon entering Chapter XI and therefore recruit a new work force, even its short-lived Chapter XI attempt would have been virtually impossible' ". (Emphasis supplied)*

Since Grant permitted the employees to continue their employment, it was bound to pay them to the "extent that the *Debtor-in-Possession was the recipient of beneficial services*" (*Mammoth Mart*, p. 955), which is precisely what the Second Circuit in *Grant* held. Therefore, *Grant* does not depend upon the rule in *Straus-Duparquet* and is consistent with *Mammoth Mart*. If *Straus-Duparquet* had never been decided, *Grant* would have ended up the same way, whether in the Second or any other Circuit.

In re Unishops, 553 F.2d 305, 309 (2d Cir. 1977), which is the basis for the *Grant* decision, is a case in point. There, Zelin, the Chief Operating Officer of Unishops, had a contract which paid him a salary of $100,000 per year and called for $100,000 severance if he were dismissed. Some six months after *Unishops* filed its Chapter XI, Zelin was discharged. The Second Circuit affirmed the award to him of the *full* amount of severance as an administration expense, basing its decision on the "benefits" principle:

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* Joint Appendix, p. 5a.

> "It is *settled law that a claim arising under an executory contract is entitled to priority 'if the trustee or debtor-in-possession elects to assume the contract or if he receives benefits under it'. American Anthracite and Bituminous Coal Corp. v. Leonardo Arrivabene*, S.A., 280 F.2d 119, 124 (2d Cir. 1960); *In re Mammoth Mart, Inc.* 536 F.2d 950, 954 (1st Cir. 1976). *As Zelin continued in Unishops' employ for some time after it entered Chapter XI, we believe the debtor received benefits under the executory contract and, hence, the claimant is entitled to priority*". (p. 308) (Emphasis supplied)

Each employee of Grant should be considered a *Zelin*. Since each Grant employee continued in Grant's employ "for some time after it entered Chapter XI" and Grant unquestionably received the benefit of his services, each Grant employee is entitled to the same administration expense priority for his severance pay as Zelin received in *Unishops*.*

There is no conflict in the several Courts of Appeals on this rule.

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* In a footnote on p. 14 of the Morgan Bank's Petition, it remarked that in *Unishops*, "the company did better by paying severance pay than it would have by honoring the full contract." The same observation might be made in *Grant*. Grant obviously "did better" by letting the employees stay on, thinking their severance pay benefits were intact, than by moving to reject severance pay at the outset of the Chapter XI. Had it done so, it would have been "suicidal" for Grant, to use the word of the Trustee in the court below, because it could have triggered a mass walk-out by the employees.

II

SINCE THE DEBTOR-IN-POSSESSION ACCEPTED BENEFITS FROM THE EMPLOYEES, IT WAS NOT NECESSARY FOR FORMAL COURT ADOPTION TO ESTABLISH AN ADMINISTRATION EXPENSE PRIORITY

The Petitioners argue that since the Bankruptcy Court never ordered the *adoption* of Grant's severance pay policy, it should be deemed rejected. This contention is not correct and the law is the same in the Second and other Circuits referred to by the Petitioners.

The Trustee relies upon *American Anthracite and Bituminous Coal Corp. v. Leonardo Arrivabene, S.A.*, 280 F.2d 119 (2d Cir. 1960) to support its contention that assumption of pre-bankruptcy executory policies requires court approval. But *American Anthracite* stands for more than that. In that case, the court distinguished between *assuming* a contract and *receiving* benefits under it.

There is a right to priority, wrote the Second Circuit in *American Anthracite*, if the debtor:

> "*assumes*" the contract because " * * * the trustee or debtor-in-possession has elected to make the contract of the debtor his own * * * ". (p. 124) (Emphasis supplied)

There is *also* a right to priority if:

> "* * * the trustee or debtor-in-possession *receive benefits* under the contract during the interval between the filing of the debtor's petition and the rejection of the contract * * * ", which "is an equitable right based upon the reasonable value of the benefits conferred, rather than upon the contract price". (p. 124) (Emphasis supplied)

Nowhere in the courts below did the Petitioners attempt to prove that the severance pay sought by Grant's employees was *more* than the reasonable value of the benefits conferred by them upon Grant. Indeed, considering the amount of money

Grant generated in its orderly liquidation, the reasonable value of the benefits conferred by its employees for all of Grant's creditors could well be *far more* than the severance pay awarded to them.

The Debtor-in-Possession itself brought this point home at the outset of the Chapter XI proceeding in October of 1975 in its petition for the arrangement:

> "14. Traditionally, the forthcoming Christmas season is the best sales period in the retail sales industry and the debtor has historically achieved its best operating results during this period. Debtor believes that the protection afforded it under Chapter XI will enable it to replenish its inventories and take advantage of the seasonal upturn of its business. Debtor anticipates that if it is allowed to continue its operations during this period that sufficient cash flow will be generated to enable the debtor to continue its operations into the new calendar year and to put the debtor into a position to implement successfully the economies in operations and other changes it proposes to make. If the debtor is not permitted to continue its operations as debtor-in-possession, its estate and its creditors will suffer and over 62,000 employees will lose their jobs, with the attendant hardships imposed on their families and communities".

Obviously, the 1975 Christmas season was of extreme importance to Grant. By working through the 1975 Christmas season, the employees generated a sizeable amount of cash for the Debtor-In-Possession. This illustrates how in some businesses, particularly one such as Grant's, profitability is telescoped into short, holiday periods when most of the year's sales are made. It also demonstrates that measuring the *benefits* which the employees conferred on Grant by the length of time they worked is irrelevant.

Without formal court adoption, or rejection for that matter, the Petitioners would like to sentence Grant's severance pay

policies to a place called "limbo", which apparently is a twilight zone midway between rejection and adoption, where the severance pay policies would never be heard from again, unless resurrected or buried by court order. This is an interesting but illogical proposition.

If *every* executory contract-vendor or employee were required to obtain *prior* court approval before he completed his contract with a debtor-in-possession, the courts would be swamped with literally millions of applications a year. This would create chaos—no,—it would completely paralyze the Bankruptcy Courts in this country. This is not the law and should not be made the law.

The cases cited by the Petitioners,

> *In re Gulfco Investment Corp.*, 520 F.2d 741 (10th Cir. 1975); *In re Maryvale Community Hospital, Inc.*, 456 F.2d 414 (9th Cir.), *cert. denied*, 409 U.S. 879 (1972); *In re American National Trust*, 426 F.2d 1059 (7th Cir. 1970); *Texas Importing Co. v. Banco Popular de Puerto Rico*, 360 F.2d 582 (5th Cir. 1966), and *Local Joint Executive Board AFL-CIO, v. Hotel Circle, Inc.*, F.2d (9th Cir. 1980) (Jt. App. IV)

for the proposition that *assumption* of *all* executory contracts requires prior court approval is a blanket misreading of those cases, which in any event have facts completely different from *Grant*. In each of those cases, the "benefits" principle was not involved. In each of them, the issue was whether the debtor-in-possession could be bound in the *future* to a contract without court approval.

American National Trust and *Texas Importing* involved executory contracts for the sale of land which were truly executory in nature and are distinguishable on those grounds alone from *Grant*.

Gulfco does not conflict with *Grant*. There the court held that it may enjoin a real property contract vendor from rescinding

his contract with the vendee-debtor, pending a determination by the trustee as to whether he should accept or reject the contract.

Rather than conflicting with *Grant*, the Ninth Circuit in *Hotel Circle*, which was decided early in 1980, distinguished between (a) adoption by a trustee of a long-term executory contract without court approval and (b) assumption of an executory contract which simply creates an administration expense. The Court found the reasoning against the authority of a Trustee to bind the estate to a "*long-term*" collective bargaining agreement beyond the term of his office more persuasive than if such assumption would "*merely establish a priority as an administration expense*". (p. 43-a, Petitioners' Joint Appendix) (Emphasis supplied)

Maryvale is not supportive of Petitioners' position, either. There the court reiterated the rule that only a court can *reject* an executory contract, that until it is rejected, it is "in full force and effect". (p.418)

This, of course, harmonizes with *Collier* which states:

> "*The failure to assume affirmatively an executory contract does not result at any time in a rejection of the contract.* Whether the debtor is in possession, or whether there is a receiver or trustee, the contract can be rejected only by affirmative action under § 313(1) and Chapter XI Rule 11-53 or § 357(2). *Unless so rejected, the contract continues in effect.*" 8 *Collier on Bankruptcy* ¶ 3.14[6] (14th ed. rev. 1975) (Emphasis supplied)

Since Grant's severance pay policies were concededly in effect when the Chapter XI was filed, they continued in effect *during* the Chapter XI. The alleged attempt by the Debtor-in-Possession to alert the employees to the possibility that severance pay might not be paid did not amount to a rejection. The necessity of affirmative court action by the debtor-in-possession to reject executory arrangement was hammered home by the Fifth Circuit in *In re Alfar Dairy, Inc.*, 458 F.2d 1258, 1261 (5th

Cir. 1972), *cert. denied* 409 U.S. 1048 (1972), where the Court wrote:

> " . . . *even though a party to an executory contract with a bankrupt may know by one means or another that the bankrupt does not intend to perform, the contract is not voided as a result of this knowledge but remains in force until rejected pursuant to the Act.* Any other rule could result in chaos and injustice in bankruptcy proceedings, which often involve hundreds of parties and strict statutory deadlines for filing claims. *Informal, ad hoc compliance with the general contours of the Act is not sufficient.*" (Emphasis added)
>
> See also *Unishops*, *supra*.

The severance pay policies of Grant *were* therefore still in effect at the moment each employee was discharged during the Chapter XI. At the moment of discharge, when the *right* to severance pay for the first time became fixed, the agreement with the employee was no longer executory. It had been completely executed by the employee during the Chapter XI. *In Re San Francisco Bay Ex.*, 50 F. Supp. 344; *Crittenden v. Lines*, 327 F.2d 537 (9th Cir. 1964); *In Re Computer Utilization, Inc.*, 508 F.2d 673 (5th Cir. 1975).

Finally, the Petitioner-Trustee argues, the adjudication of Grant as a bankrupt on April 13, 1976, retroactively caused a rejection of *all* of Grant's executory policies and contracts, *as of October 2, 1975.** The Petitioner does not cite a single authority to support this rather startling proposition. And with good reasons. First of all, there is none, at least none that we could find. Secondly, it just does not make sense.

The purpose of a Chapter XI is to rehabilitate an ailing debtor. To induce vendors and others to deal with the debtor-in-

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* No explanation is offered by the Petitioner-Trustee as to what effect this retroactive rejection would have on Mr. Sundman, who received his windfall shortly after that date.

possession, the Bankruptcy Act, § 64a(1) affords these creditors a first priority administration expense. It would defeat the purpose of that section if every vendor or employee had to speculate on the ability of the debtor-in-possession to rehabilitate itself, or face the danger of having his claim as a first priority administration expense converted into a general claim long after he delivers his goods or renders his services. Under these circumstances, no creditor would ever deal with a debtor-in-possession.

We do not believe that this is the law in the Second or any other Circuit.

CONCLUSION

The Petitioners argue that if the decision by the Second Circuit in *Grant* is not reversed, debtors will go forum shopping to determine which Circuit suits their needs. The rule in the "other" Circuits, contend the Petitioners, is the better one and should be followed by all of the Circuits in the United States. According to the Petitioners, this Court should set a national rule which would be applicable to every bankruptcy situation.

We do not believe that the intent of either the Bankruptcy Act or the new Bankruptcy Code would be met if a court imposed hard and fast rules which would apply to every conceivable set of facts. The philosophy underlying the bankruptcy laws is an equitable one, designed to fashion solutions to problems as they emerge and to set forth broad guidelines for the courts to follow.

The authorities cited by both the Petitioners and ourselves demonstrate that the courts have reached different conclusions on different sets of facts which is as it should be. It is only through a case-by-case determination of the facts peculiar to each case that equitable rules can be tailored to fit each problem.

We respectfully submit this can be done most efficiently and effectively by the local bankruptcy courts, subject to the usual

review by the district courts, and the several Courts of Appeals, and subject to review by this Court only where there has been a substantial and radical departure from truly recognized *substantive* law. To ask this Court to act as a "super" bankruptcy court every time one Court of Appeals criticizes another would open the floodgates to every difference of approach or difference of opinion expressed by a court to meet the facts unique to the case before it.

The instant case provides a unique set of facts which has properly been decided according to the benefits conferred upon the Debtor-in-Possession by the employees. To adopt the position of the Petitioners would equalize the status of the employees with the general creditors, even though the general creditors did not confer any benefits upon the Debtor-in-Possession. This would be in clear violation of the applicable Bankruptcy Act. Of equal importance, it would be inequitable.

Certiorari should be denied.

Dated: New York, New York,
April 23, 1980.

Respectfully submitted,

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